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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants: Kevin J. KAYSER
John J. KILBANE II

Serial No.: 10/086,105

Filing Date: 28 February 2002

Title: SYSTEM AND METHOD FOR GENE
EXPRESSION IN THERMUS STRAINS

Group No.: 1652

Examiner:
Fronza, Christian L.

**RESPONSE TO REQUIREMENT FOR RESTRICTION
PURSUANT TO 35 U.S.C. 121**

Commissioner for Patents
Alexandria, VA 22313-1450

Dear Sir:

This communication is being filed in response to the Office Action mailed 14 July 2004 wherein the Examiner has indicated that the subject application contains eight (8) distinct inventions and, thus, is subject to a restriction and/or election requirement. In response thereto, Applicants hereby elect to prosecute Claims 1, 6, 7, 8, 15, 17, 18, 19, 25 and 26 drawn to a method for making carotene pigment and a protein of interest using a vector comprising a *Thermus* promoter sequence, identified by the Examiner as Invention 2.

I hereby certify that this correspondence (along with any paper referred to as being attached or enclosed) is being deposited with the United States Postal Service as First Class Mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on

13 August 2004

13 Aug 2004
Date

Mark E. F.
Signature

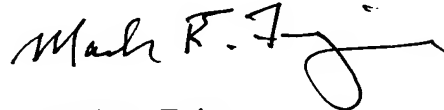
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Notwithstanding this election, Applicants respectfully traverse this restriction requirement on the grounds that, in all of the inventions identified by the Examiner, there is but a single purpose, that is the production of carotene pigments. Applicants further note that independent Claim 1 is identified by the Examiner as being common to all of the inventions alleged by the Examiner to be present in the subject application and independent Claim 15 is identified by the Examiner as being common to Inventions 1-7 alleged by the Examiner to be present in the subject application. On this basis, Applicants respectfully urge that Claim 1 is a generic claim and that the inventions alleged by the Examiner to be present in the application constitute nothing more than various embodiments. Thus, Applicants respectfully urge that, in the event that Claim 1 is found to be allowable in its present form, consideration should be given to reinstating the non-elected claims. Likewise, Applicants respectfully urge that, in the event that Claim 15 is found to be allowable in its present form, consideration should be given to reinstating the non-elected claims dependent therefrom.

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Applicants sincerely believe that this application is now in condition for examination and, thus, respectfully request early allowance.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Mark E. Fejer", with a stylized flourish at the end.

Mark E. Fejer
Regis. No. 34,817

Gas Technology Institute
1700 South Mount Prospect Road
Des Plaines, Illinois 60018
TEL (847) 768-0832; FAX (847) 768-0802